

Title 15. Board of Parole Hearings (formerly Board of Prison Terms)

STATEMENT OF EMERGENCY

RN 06-02

SUBJECT: MECHANICAL RESTRAINTS

NOTICE IS HEREBY GIVEN that the Board of Parole Hearings (Board) proposes to adopt, on an emergency basis, Title 15, Division 2, California Code of Regulations (CCR) § 2035 concerning the Board's mechanical restraint policy.

AUTHORITY

This regulation is submitted pursuant to the Board's authority under Government Code § 12838.4 and Penal Code §§ 3052 and 5076.2.

REFERENCE

This regulation is adopted to implement, interpret, and/or make specific Penal Code §§ 2962, 2964, 2966, 3041, 3056, 3060 and 5076.1; *Armstrong v. Schwarzenegger*, U.S.D.C. N. Dist. Cal. Case No. C94-2307 CW; and *In re Martin*, Sacramento Superior Court Case No. 03F10102.

FINDING OF EMERGENCY

The Board finds that its February 22, 2006 emergency order adopting 15 CCR § 2035 is necessary for the immediate preservation of the public peace, health and safety, or general welfare. The Board needs its own restraint policy that affords adequate safety to participants at its hearings while affording due process and disability accommodation to prisoners and parolees. This action permits the hearings to continue safely.

The Board has determined that no reasonable alternatives identified or considered would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to affected private persons than the proposed regulatory action.

As this regulatory amendment is necessary in order for the Board to comply with the courts' orders as explained below, the Board intends that this adoption take effect as soon as possible, on an emergency basis, until made permanent under appropriate procedures.

BACKGROUND

The original parole hearing restraint policy formulated by the Board and the former Department of Corrections (now the California Department of Corrections and Rehabilitation) (CDCR) acknowledged the special security needs inherent in Board hearings and that the Commissioner or Deputy Commissioner presiding over the hearing

must have the ability to have the inmate or parolee in restraints. The purpose of Administrative Directive AD 01/01R was to acknowledge that policy and also make a minor exception for inmates and parolees with disabilities pursuant to a federal court permanent injunction issued in *Armstrong v. Schwarzenegger*, U.S.D.C. N. Dist. Cal. Case No. C94-2307 CW. The permanent injunction in *Armstrong v. Schwarzenegger* requires that adult prisoners and parolees with specified disabilities be afforded the opportunity to effectively participate in parole proceedings while maintaining adequate security of facilities and safety of persons. For example, accommodations to restraints must be provided for inmates and parolees who use American Sign Language as their primary method of communication except when deemed necessary after individualized review and prior approval by the Executive Officer or designee.

CDCR has a general policy concerning use of restraints—CCR §3268.2. However, the court held in *In re Martin*, Sacramento County Superior Court, Case No. 03F10102, that §3268.2 did not apply to Board hearings. Thus, the Board must adopt its own regulations providing an adult restraint policy. This regulatory adoption must be done on an emergency basis since having the full policy effective immediately is necessary to protect the safety of Commissioners, Deputy Commissioners, and others attending the hearings.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Government Code § 12838.4 vests the Board of Parole Hearings with all the powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the Board of Prison Terms, Narcotic Addict Evaluation Authority, and Youthful Offender Parole Board, which no longer exist.

Penal Code § 3052 vests with the Board the authority to establish and enforce rules and regulations under which prisoners committed to state prisons may be allowed to go upon parole outside of prison when eligible for parole.

Penal Code § 5076.2 authorizes the Board to promulgate, maintain, publish, and make available to the general public a compendium of its rules and regulations.

The intent of new §2035 is to promulgate a regulation containing the provisions in the former Administrative Directive and thus continue that policy in a manner consistent with the *Martin* court decision and the permanent injunction issued in *Armstrong v. Schwarzenegger*. There is no intent to increase the level of security that has been historically provided at Board hearings.

LOCAL MANDATES

The Board has determined that the proposed action imposes no mandate upon local agencies or school districts.

FISCAL IMPACT STATEMENT

- Cost to any local agency or school district which must be reimbursed in accordance with Government Code §§ 17500 through 17630: *None*
- Cost or savings to any state agency: *None*
- Other non-discretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*